

STATE OF INDIANA)
) SS:
COUNTY OF HENRY)

IN THE HENRY CIRCUIT COURT

CAUSE NO. 33C01 - 0610 MI - 0041

STEVE CARTER,
INDIANA ATTORNEY GENERAL,

Petitioner,

v.

COMMUNITY ATHLETICS
PUBLISHING, INC.,

Respondent.

FILED

OCT 13 2006

Stephen D. French
CLERK HENRY CIRCUIT COURT

PETITION TO ENFORCE CIVIL INVESTIGATIVE DEMAND

Attorney General Steve Carter, by Deputy Attorney General Terry Tolliver,
petitions the Court, pursuant to Indiana Code § 4-6-3-6, for an order to enforce a Civil
Investigative Demand.

RESPONDENT

1. The Respondent, Community Athletics Publishing, Inc., is an Illinois corporation, and solicits businesses throughout the State of Indiana, including businesses located in Henry and Vigo County, to purchase advertising space on posters displaying the schedules of local high school athletic teams.

FACTS

2. At least since December 6, 2005, the Respondent has engaged in the solicitation of advertising space on posters displaying the schedules of local high school athletic teams.

3. Due to information provided in consumer complaints, the Attorney General has reason to believe the Respondent may be in possession, custody, or control of documentary material, and may have knowledge of facts that are relevant to an investigation being conducted to determine whether the Respondent has violated the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(1), by misrepresenting the sponsorship, approval, characteristics, or benefits of a consumer transaction, Ind. Code § 24-5-0.5-3(a)(2), by misrepresenting the subject of a consumer transaction if of a particular standard, quality, grade, style, or model, if it is not and if the supplier knows or should reasonably know that it is not, and Ind. Code § 24-5-0.5-3(a)(7), by misrepresenting the Respondent has a sponsorship, approval, or affiliation in a consumer transaction.

4. Pursuant to Ind. Code § 4-6-3-3, the Attorney General served Civil Investigative Demand 06-060 ("CID") upon the Respondent by first-class mail on September 12, 2006. Attached and incorporated by reference as Exhibit "A" is a true and accurate copy of the CID served upon the Respondent.

5. On September 27, 2006, the Attorney General received a response from the Respondent's Counsel, Dennis M. Sheehan. In his response, the Respondent's Counsel objected to the definitions of "booster club" and "booster club materials" and refused to respond to the CID. Attached and incorporated by reference as Exhibit "B" is a true and accurate copy of the Respondent's Counsel's response to the CID.

6. On September 27, 2006, Deputy Attorney General Terry Tolliver, on behalf of Attorney General Steve Carter, telephoned the Respondent's Counsel, Dennis M. Sheehan, and requested a complete response to the CID.

7. On September 28, 2006, Deputy Attorney General Terry Tolliver, on behalf of Attorney General Steve Carter, wrote the Respondent's counsel, Dennis M. Sheehan, to request a complete response to the CID, clarify the definitions, and provide a copy of the statute and relevant case law. Attached and incorporated by reference as Exhibit "C" is a true and accurate copy of this letter requesting a complete response to the CID.

8. On October 2, 2006, the Respondent's Counsel, Dennis M. Sheehan, responded to the Attorney General's request for a complete response to the CID and stated the CEO of the Respondent Corporation, Timothy Castle, was recently hospitalized and a response within the next ten (10) days would not be possible. Attached and incorporated by reference as Exhibit "D" is a true and accurate copy of the Respondent's response to the Attorney General's request for a complete response.

9. The Respondent has failed to respond to the CID, and its refusal to do so is in bad faith.

10. Pursuant to Ind. Code § 4-6-3-6, if a person objects or fails to obey a Civil Investigative Demand, the Attorney General may file an application for an order to enforce the Demand in a Circuit or Superior Court in the County in which the Respondent resides, or maintains a principal place of business within the state.

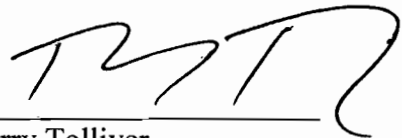
RELIEF

WHEREFORE, the Attorney General, requests the Court set this petition for hearing and following such hearing, enter an order requiring the Respondent to answer the Civil Investigative Demand, to pay the Office of the Attorney General its reasonable costs of investigation including attorneys' fees, and all other proper relief.

Respectfully submitted,

STEVE CARTER
Indiana Attorney General
Attorney No. 4150-64

By:


Terry Tolliver
Deputy Attorney General
Atty. No. 22556-49

Indiana Office of the Attorney General
302 West Washington Street, 5th Floor
Indianapolis, IN 46204-2794
Telephone: (317) 233-3300

**OFFICE OF THE INDIANA ATTORNEY GENERAL
CONSUMER PROTECTION DIVISION**

IN RE: COMMUNITY ATHLETICS)	CIVIL INVESTIGATIVE
PUBLISHING, INC.,)	
)	DEMAND NO. <u>06-060</u>
Respondent.)	

THE ATTORNEY GENERAL TO: **Timothy S. Castle**
 Community Athletics Publishing, Inc.
 15 South Capital Street, Suite 211
 Pekin, IL 61554

CIVIL INVESTIGATIVE DEMAND

Attorney General Steve Carter, pursuant to the provisions of Indiana Code § 4-6-3-3, states he has reasonable cause to believe you may be in possession, custody, or control of documentary material, or may have knowledge of a fact relevant to an investigation being conducted by the Consumer Protection Division. This investigation seeks to determine whether the Respondent, Community Athletics Publishing, Inc., has violated the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-1-1, *et seq.*, by misrepresenting an affiliation with local schools when soliciting Indiana businesses to purchase advertising on booster club materials and representing the proceeds from such transaction would benefit the school and/or school corporation.

The Attorney General demands you, your representative, or your agent respond to this Civil Investigative Demand by providing answers to the attached Interrogatories and responses to the Requests for Production of Documents.

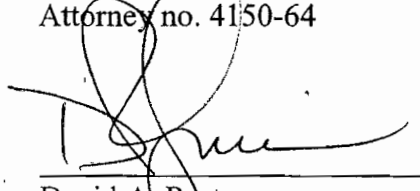
You are to appear at the Office of the Attorney General, Consumer Protection Division, 302 West Washington Street, Indiana Government Center South, 5th floor, Indianapolis, Indiana on September 25, 2006, at 10:00 a.m., or at such time as may be

agreed upon, to respond to the questions contained in this Civil Investigative Demand, and to bring with you, produce and allow the Attorney General, by Deputy Attorney General Terry Tolliver, to inspect, photocopy, and transcribe any and all information requested in the attached Interrogatories and Requests for Production of Documents.

WITNESS my hand and seal of the Office of the Attorney General, State of Indiana, this 5th day of September, 2006.

STEVE CARTER
Indiana Attorney General
Attorney no. 4150-64

By:


David A. Paetzmann
Deputy Attorney General
Attorney No. 6392-23

Please direct your response and all inquiries related to this Civil Investigative Demand to:

Terry Tolliver
Deputy Attorney General
Office of the Attorney General
302 West Washington Street
Indiana Government Center South, 5th Floor
Indianapolis, IN 46204
(317) 233-3300
ttolliver@atg.state.in.us

I. INSTRUCTIONS

A. Answer each interrogatory separately and fully in writing and under oath. In answering the interrogatories, furnish all information available to you, regardless of how that information was obtained, and regardless of whether such information may be hearsay. Include information known by, or in the possession of, you; information known by, or in the possession of, your officers, employees, agents, or attorneys; and information appearing in your records.

B. If you cannot answer the following interrogatories fully and completely after exercising due diligence to secure all requested information, then answer each to the extent possible, specifying your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion, and detailing your attempts to secure the unknown information.

C. A question that seeks information contained in or about any document, or that seeks the identification of any document, may be answered by providing a copy of such document for inspection and copying, or by furnishing a copy of such document.

D. Your reply to each interrogatory should include attachments of as many pages as necessary to fully and completely respond, and should be identified by the number corresponding to each interrogatory as set forth below.

II. DEFINITIONS

As used in these Interrogatories and Requests for Production, the following terms have the following meanings, unless otherwise defined by a specific interrogatory or request:

A. "Document" means any written, printed, typed, or other graphic or photographic representation or reproduction of any nature, any electronic representation or communication, and any audio or video recordings in your possession, custody, or control, or known by you to exist or to have existed. All copies of documents containing any alterations or annotations, or that differ in any other way from the originals or copies referred to in the preceding sentence, are deemed separate documents from the originals or copies.

B. "Person" includes any individual, corporation, partnership, group, association, government entity, or any other organization.

C. "You" or "your" means Community Athletics Publishing, Inc., and any and all of its employees, agents, and representatives acting within the scope of their employment.

D. "Booster Club" shall mean an organization consisting primarily of parents, faculty members, school administrators, local businesses, and members of the community established to raise funds used in promoting and supporting the academic and athletic programs of the school.

3. Since February 23, 2006, please state the number of contracts you, or any business or entity identified by you in response to Interrogatory number two (2), have entered into with Indiana schools and/or school corporations authorizing you to solicit the sale of advertisements placed in your booster club materials on behalf of the Indiana school and/or school corporation, and for each contract, state the following:

- a. The name and contact information for the sales representative and/or agent who initiated the transaction;
- b. The date of the contract;
- c. The contract terms;
- d. The name, address, and telephone number of the Indiana school and/or school corporation with whom you contracted;
- e. The date(s) you produced the materials;
- f. The locations you distributed the materials;
- g. The total amount of revenue generated by the sale of the booster club materials;
- h. The amount of proceeds from the sale of the booster club materials distributed to the Indiana school and/or school corporation;
- i. How you determined the amount to distribute to the Indiana school and/or school corporation;
- j. The date(s) you distributed those funds to the Indiana school and/or school corporation; and
- k. The current balance currently owed to each Indiana school and/or school corporation.

ANSWER:

4. Since February 23, 2006, please state the number of contracts you, or any business or entity identified by you in response to Interrogatory number two (2), have entered into with Indiana businesses for the sale of advertisements in your booster club materials, and for each contract, state the following:

- a. The name and contact information for the sales representative and/or agent who initiated the transaction;
- b. The date of the contract;
- c. The contract price;
- d. The name, address, and telephone number of the Indiana business with whom you contracted;
- e. The date(s) you produced the materials; and
- f. The locations you distributed the materials.

ANSWER:

I affirm, under the penalties for perjury, that the foregoing representations are true.

Community Athletics Publishing, Inc.

By: _____

Printed Name: _____

Title: _____

Date: _____

REQUESTS FOR PRODUCTION OF DOCUMENTS

1. Please produce a copy of any and all contracts entered into by Community Athletics Publishing, Inc with those Indiana schools and/or school corporations identified by you in response to Interrogatory Three (3).

2. Please produce a copy of any and all contracts entered into by Community Athletics Publishing, Inc. with those Indiana businesses identified by you in response to Interrogatory Four (4).

3. Please produce any and all records identifying the sources of all revenue generated from the sale of advertisements to those Indiana businesses, identified by you in response to Interrogatory Four (4), for placement on booster club materials.

4. Please produce any and all records showing proof of each payment to those Indiana schools and/or school corporations, as identified by you in response to Interrogatory Three (3).

5. Please produce a copy of any scripts or training materials you provide to your employees to assist them in their solicitations of others for the purchase of booster club materials.

6. Please produce a copy of any and all documents identified, referenced, or otherwise relied upon by you in formulating a response to any of the above Interrogatories not already supplied pursuant to these Requests for Production.

RECEIVED

SEP 27 2006

DENNIS M. SHEEHAN
Attorney at Law

ATTORNEY GENERAL OF INDIANA
~~CONSUMER PROTECTION~~
406 Court Street
Pekin, Illinois 61554
(309) 347-5217

September 25, 2006

Mr. Terry Tolliber
Deputy Attorney General
Consumer Protection Division
302 W. Washington Street
Indianapolis, IN 46204-2770

In re: Timothy S. Castle
Community Athletics, Inc.
Your cause #: 06-060

Dear Mr. Tolliber:

On September 22, 2006 I had an office consultation with Timothy S. Castle who is the CEO of Community Athletics Publishing located here in Pekin, Illinois. He requested of me that I prepare for his organization the answers to the Interrogatories which you sent to him with your letter dated September 12, 2006.

My office has done legal work for Mr. Castle and his corporation for a number of months and although I certainly don't work at his business I believe I have a general idea as to how he operates that business. I am enclosing the answers to the Interrogatories. Obviously, the problem I had with answering these Interrogatories is using the definitions you place at the beginning of the Interrogatories with reference to "booster club" and "booster club materials". As I mentioned to you in the Interrogatories, I don't believe the definition you gave to those words covers my client at all. That is the reason why I am sending you this letter.

Community Athletics Publishing, Inc. has, as part of its business operation, telephone solicitation. I understand that this Illinois corporation obtains from the telephone company in many areas (the State of Indiana included) telephone books and from those telephone books they come to discover through some investigation

Mr. Terry Tolliber, Deputy Attorney General
September 25, 2006
Page two

unknown to myself the name of the local teams in that area which are usually high school teams. This corporation is also able to discover the schedules for upcoming football/basketball and baseball as well as other athletic events of that high school team in the area. The solicitors from Community Athletics Publishing, Inc. then use the Yellow Pages of the telephone directory for each community and begin calling those businesses for the purposes of trying to obtain agreements with them to purchase advertising for a particular basketball, baseball or football schedule for the local team. Once the corporation has a sufficient number of purchasers of advertising space which surrounds the schedule, the company then prepares a document containing the schedule and the advertisers' names and addresses which is then distributed back into the local community.

I personally do not know whether or not the display of the schedule of the team has been approved by the school but since such information is already in the public domain anyway, I do not believe that my client must receive permission from the local school in order to advertise the schedule. The way my client looks at this matter, everyone benefits from this activity. The advertisers benefit by having their names on the brochure advertising their business activity, the school benefits because more members of the public see the schedule of the school basketball or football team displayed in public places around the community thereby perhaps getting more attendance at the stadium where the team is playing and my client earns income from selling the advertising space to the advertisers. I have been told by Mr. Castle, the CEO, that on those occasions when Community Athletics Publishing, Inc. is able to reap a profit from this activity, a donation is sent, totally unsolicited to the school. What I have explained above is what has led me to believe that the words "booster club" do not apply to my client because categories of persons and organizations listed under "booster club" do not apply to my client and funds my client earns from producing this document for distribution in the community may or may not support the athletic event but if the brochure does support the athletic event the proceeds from the athletic event never, of course, are returned to my client. With reference to your definition of "booster club materials" that definition states that the proceeds from the sale of the materials are being used in part for the promotion or support of the program or team. Once again, the advertising could be classified as a sale by my client to one

Mr. Terry Tolliber, Deputy Attorney General

September 25, 2006

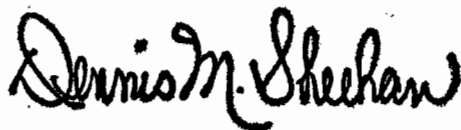
Page three

or more of the local businesses but the support of the high school team does not come back to my client from the school but only benefits the school by way of possible higher fan support at particular games. Of course, your letter of December 12, 2006 does not contain any information in it at all with reference to the reason or reasons why your office is conducting an investigation into this activity. If you would care to provide my office with additional information concerning the reason why such an investigation is being held and/or whether or not a customer of my client has a complaint about the services of my client with regard to this activity, I will endeavor to answer that question when you provide me with the appropriate information.

I can also inform you that I have always advised my client that when solicitations are being made by telephone the solicitor must never say that he or she is representing the particular school whose schedule is on the document. I have also told my client that if a question is asked by a prospective advertiser as to whether or not the school is involved in this activity, that solicitor must obviously state that Community Athletics Publishing, Inc. is not associated with the particular school.

I will be awaiting your reply.

Very truly yours,

A handwritten signature in black ink, reading "Dennis M. Sheehan". The signature is written in a cursive, flowing style with a large, prominent "D" and "S".

Dennis M. Sheehan
DMS/kn

STATE OF INDIANA
ATTORNEY GENERAL
STEVE CARTER

September 28, 2006

Re: CID 06-060

Dennis M. Sheehan
Attorney at Law
406 Court Street
Pekin, IL 61554

Dear Mr. Sheehan:

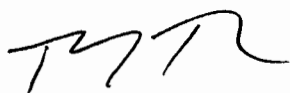
I am writing in regards to your client's "response" to the Attorney General's Civil Investigative Demand 06-060 ("CID"). I have reviewed your letter and do not consider this to be a good faith response to the CID and request your client reconsider its response.

To assist your client in preparing its response, I will agree to amend the definition of "booster club materials" to include the solicitation of advertisements surrounding the schedules of a local baseball, basketball, or football team. Furthermore, I do not understand your argument regarding the proceeds from your client's sales, as you state, "when Community Athletics Publishing, Inc. is able to reap a profit from [the sale of advertising space], a donation is sent, totally unsolicited to the school." This would certainly fall within the definition of booster club materials ("... the proceeds from the sale of which may be used in part for the promotion and and/or support of the academic and athletic programs of an athletic team, school, or school corporation.").

Finally, I have enclosed a copy of the relevant statute, Indiana Code § 24-5-0.5-1 *et seq.*, being investigated, as well as a copy of *Auto-Owners Insurance Company v. State of Indiana*, 692 N.E.2d 935, which explains the CID process and the authority of the Attorney General to investigate such matters.

Please review this matter with your client and have it submit a complete response to the CID within the next ten (10) days. If I do not receive this within that time, I will assume your client does not wish to voluntarily cooperate with the Attorney General's investigation and file a Petition to Enforce requesting the Court order your client to respond, as well as award attorney's fees for your client's bad faith. Should you have any questions or concerns, please do not hesitate to contact me at (317) 233-3300.

Sincerely,



Terry Tolliver
Deputy Attorney General
Consumer Protection Division

Enclosures (2)



DIVISION OF CONSUMER PROTECTION
INDIANA GOVERNMENT CENTER SOUTH, FIFTH FLOOR
302 WEST WASHINGTON STREET • INDIANAPOLIS, IN 46204-2770
TELEPHONE (317) 232-6330 • (800) 382-5516

Blumberg No. 5138

STATE'S
EXHIBIT

C

OCT. 2. 2006 10:49AM

DR. R KABATAY

NO. 0893 P. 1

ProHealth Family Medicine

Jeffrey Lee Ho, M.D., A.B.F.M. Rhodora Lee Ho, M.D., A.B.F.M.
Gregory Moskop, M.D., A.B.F.M. Cheryl LeNeve, P.A.-C.
600 S. 13th St, Suite 1
Pekin, IL 61554
Phone (309) 346-1102
Fax (309) 347-2885 (front office)
(309) 347-2581 (lab area)
(309) 347-1598 (clinical triage)

**ProHealth Family
Medicine****Fax**

To: DENNIS SHEEHAN From: DR. JEFF LEE HO
Fax: 347-6347 Pages: _____
Phone: _____ Date: 10-2-06
Re: _____ CC: _____

☐ Ur

PEKIN
PROHEALTH INC.
PROGRESSIVE HEALTH SYSTEMS

RHODORA K. LEE HO, M.D.

JEFFREY B. LEE HO, M.D.

cle

ProHealth Family Medicine
600 S. 13th St., Suite 1
Pekin, Illinois 61554

DEA Reg. No. _____

☐ Co

Telephone: (309) 346-1102

NAME

Timothy Castle

AGE

10-2-6.

ADDRESS

R

Mr Castle is hospitalized
starting 10/1/6, and is
currently still being
treated as an inpatient

☐ LABEL

REFILL _____ TIMES

☐ MAY SUBSTITUTE☐ MAY NOT SUBSTITUTE

, M.D.

Blumberg No. 5138

STATE'S
EXHIBIT

DENNIS M. SHEEHAN

**ATTORNEY AT LAW
408 COURT STREET
PEKIN, ILLINOIS 61554
(309) 347-5217**

DATE:

October 2, 2006

RE:

Community Athletics Publishing
P.O. Box 637
Pekin, IL 61555

TO:

Terry Tolliver

RECEIVED

OCT 05 2006

ATTORNEY GENERAL OF INDIANA
CONSUMER PROTECTION

Dear Mr. Tolliver

I received your letter dated September 28, 2006 this date and after I read it I received by fax the enclosed document from a doctor here in Pekin concerning the CEO of the above named company, a gentleman named Timothy Castle.

I am sending you this report because I know that you stated in your letter that you wanted a response in 10 days. That will not be possible based upon Mr. Castle's hospitalization.

I can advise that I made a copy of your letter and sent it to Mr. Castle at his office address requesting of him that he contact me as soon as possible.

When I received word from Mr. Castle I will correspond with you. If you haven't heard from me by October 31, 2006 please advise.

Very truly yours D M Sheehan

RECEIVED

OCT 18 2006

ATTORNEY GENERAL OF INDIANA
CONSUMER PROTECTION